Editor's note: returned to court -- aff'd in partial decision, briefing ordered on other issue, sub nom. Sudhir Sahni v. Watt, Civ. No. CV-S-83-96 (D. Nev. Jan. 17, 1990), aff'd, (Jan. 14, 1991), aff'd, No. 91-15398 (9th Cir. April 27, 1992), 961 F2d 217 (Table)

BEN COHEN
RAY C. NORDSTROM
(ON JUDICIAL REMAND)

IBLA 75-396 Decided August 5, 1988

Judicial remand of the decision Ben Cohen, 21 IBLA 330 (1975), reconsideration denied (April 18, 1977), in which the Board affirmed rejection of soldiers' additional homestead rights and forest lieu selection rights.

Decision rejecting selection rights affirmed as modified.

1. Administrative Procedure: Hearings -- Hearings -- Rules of Practice: Appeals: Hearings -- Rules of Practice: Hearings

   A request for a hearing will be granted only where there is a material issue of fact requiring resolution through the introduction of testimony or other evidence. In the absence of such an issue, no hearing is required.

2. Exchanges of Land: Forest Exchanges -- Scrip

   A forest lieu selection right is extinguished where the base land is reconveyed to the principal, i.e., the party who originally conveyed the land to the United States. The purported agent or attorney-in-fact of the principal has no rights thereafter against the United States, even if he recorded his power of attorney prior to the reconveyance. The United States is not required to determine the rights of various putative assignees asserting a selection right.

3. Scrip -- Soldiers' Additional Homesteads

   The Act of Aug. 18, 1894, 43 U.S.C. § 276 (1982) validates certain categories of soldiers' additional homestead certificates issued prior to Aug. 18, 1894. It does not validate certificates issued after that date, nor does it validate uncertificated soldiers' additional homestead rights.

4. Scrip -- Soldiers' Additional Homesteads

   When an assignee of a soldiers' additional homestead right presents an application to enter land pursuant

> to such right, the identity of the original assignor with the soldier and original homestead entryman must be established by the affidavits of two witnesses having personal knowledge of the facts, or, if such witnesses cannot be procured, a satisfactory reason must be given and other facts presented tending to establish such identity.

APPEARANCES: George Rodda, Jr., Esq., Newport Beach, California, for appellants; Burton J. Stanley, Esq., Office of the Regional Solicitor, Sacramento, California, for the Bureau of Land Management; Charles K. Hauser, Esq., Deputy District Attorney, Las Vegas, Nevada, for Clark County, Nevada, intervenor.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

In Ben Cohen & Ray C. Nordstrom, 21 IBLA 330 (1975), reconsideration denied (Apr. 18, 1977), this Board affirmed a decision by the Nevada State Office, Bureau of Land Management (BLM), rejecting the application of Ben Cohen and Ray C. Nordstrom (appellants) for the conveyance of 154.37 acres of land in Clark County, Nevada (Clark County), based on 80 acres of soldiers' additional homestead (SAH) rights and 80 acres of forest lieu selection (FLS) rights. 1/ The United States District Court for the District of Nevada has remanded this case to the Board for further consideration. Cohen & Nordstrom v. Watt, Civ. No. LV-83-96-HDM (D. Nev. entered Dec. 11, 1987).

The statutory basis for SAH entitlements is found in the Act of June 8, 1872, 43 U.S.C. §§ 271-274 (1982). 2/ This Act entitled honorably discharged Civil War soldiers and sailors to acquire homesteads of up to 160 acres. Under 43 U.S.C. § 274 (1982), soldiers and sailors who had entered less than 160 acres were entitled to enter additional lands:

> Every person entitled under the provisions of section 271 of this title to enter a homestead, who may have, prior to June 22, 1874, entered under the homestead laws, a quantity of land less than one hundred sixty acres, shall be permitted to enter so much land as, when added to the quantity previously entered, shall not exceed one hundred and sixty acres.

Appellants' assertion of SAH entitlement was based on military service in 1864 by one John Jones of Illinois, together with Homestead Entry No. 1244 made in 1868 in Springfield, Missouri, also by a John Jones, alleged by

---

1/ The application sought title to two tracts, described as follows by applicants: "Tract A: T. 21 S., R. 61 E., M.D.M., Sec. 32, N 1/2 NE 1/4, SE 1/4 NE 1/4, and the N. 29.37 acres of SW 1/4 NE 1/4, containing 149.37 acres, more or less [; and] Tract B: T. 21 S., R. 61 E., M.D.M., Sec. 32, Lot 33 of the SW 1/4, containing 5 acres, more or less."

2/ Although these provisions were included in the 1982 United States Code, they were repealed by P.L. 94-579, § 702, 90 Stat. 2787 (1976), but remained effective in Alaska until 1986.

appellants to be one and the same person. With their application, appellants presented copies of documents bearing on this military service and homestead entry, as well as copies of a chain of assignments of this asserted SAH entitlement from Jones to them.

The statutory basis for FLS rights is found in the Act of June 4, 1897, 30 Stat. 36, and the Act of March 3, 1905, 33 Stat. 1264. Appellants base their claim on a July 10, 1900, conveyance of 80 acres of forest lands from a Mr. and Mrs. C. W. Clarke (the Clarkes) to the United States. The FLS entitlement would have arisen in order to compensate the Clarkes for their conveying these lands to the United States by allowing them to select 80 acres of other Federal lands.

On February 20, 1975, BLM rejected the FLS rights at issue, ruling that reconveyance of the base land supporting the FLS claim to the Clarkes on September 18, 1957, had removed the legal basis for them to make a claim for lieu selection. Further, BLM noted that appellants' FLS rights were no longer valid, as the Act of August 31, 1964, 78 Stat. 751, provided that all FLS rights which were not satisfied by January 1, 1970, had automatically become null and void.

BLM also rejected appellants' SAH application, noting that identical alleged SAH rights of John Jones had been declared invalid twice previously, in connection with applications filed in 1960 by one Kenneth D. Miller and in 1962 by one Charles M. Dollarhide. 3/ BLM ruled that appellants had shown no proof that John Jones, the soldier, and John Jones, the entryman were the same person. This fact was critical to the validity of the SAH scrip, as only honorably discharged Civil War soldiers who had also initiated a homestead entry for less than 160 acres prior to June 22, 1874, were entitled to selections under the Act of June 8, 1872, supra. George Rodda, Jr., 7 IBLA 79 (1972); Eugene Symons Eldridge, A-29352 (Nov. 4, 1963). BLM also held that the documentation provided by appellants, which consisted of machine copies, was inadequate to establish their SAH entitlement.

In affirming BLM's denial of their application, we noted that appellants had acquired their SAH rights on assignment from Dollarhide, and those rights had previously been ruled invalid by a final Departmental decision. We noted that appellants had failed to submit further evidence that Jones the soldier and Jones the entryman were the same person. In the absence of

3/ Miller's application was rejected on Oct. 25, 1960, by the BLM office in Los Angeles, California. Evidently, no appeal was filed by Miller. Dollarhide's application was rejected by the Nevada State Office on Aug. 16, 1962, and this decision was affirmed on subsequent appeals both to the Director of BLM, and to the Solicitor, who reviewed BLM's decision on behalf of the Secretary, under the administrative review procedure in effect at that time. Charles M. Dollarhide, A-29933 (Mar. 5, 1964). In each case, the SAH scrip was declared invalid because the applicant failed to prove that the soldier and the entryman were the same person. These findings were based in part on the fact that John Jones, the soldier, had signed his name with an "X," while John Jones, the entryman, signed his name in writing.

any further proof that the SAH scrip was in fact valid, and in the absence of other compelling legal or equitable reasons for reconsidering the Department's decision that this scrip was invalid, we ruled that the doctrine of administrative finality barred our consideration of the new appeal addressing the validity of the scrip. Ben Cohen, supra at 331. Administrative Judge Fishman, concurring specially, went further, noting his agreement with BLM's finding below that the documentation submitted by Cohen and Nordstrom in support of their scrip rights failed to establish that they held valid scrip. Id. at 335.

We also affirmed BLM's rejection of the FLS scrip because it had been filed after the January 1, 1970, deadline imposed by Congress in the Act of August 31, 1964, supra, in accordance with the holding of the Ninth Circuit Court of Appeals in Bronken v. Morton, 473 F.2d 790 (9th Cir. 1973). Further, we affirmed BLM's determination that the conveyance of the base lands from the United States to the Clarkes had terminated the basis for any entitlement to select lieu lands held by appellants as the Clarkes' assignees. Finally, we expressly rejected appellants' argument that their FLS right should be considered valid because BLM had allegedly "refused to accept" their FLS application. Ben Cohen, supra at 332, 333. 4/

On August 19, 1976, appellants petitioned this Board for reconsideration of our decision, asserting that they had newly discovered evidence concerning John Jones' signatures on relevant documents establishing that the soldier and the entryman were the same person, and that their SAH scrip was therefore valid. 5/ They also requested that we reconsider our decision regarding their FLS scrip, but asked that we defer consideration of this question pending location of certain relevant Government files.

We agreed to accept appellants' new evidence and convened oral argument. However, by order dated April 18, 1977, we denied reconsideration of the SAH claim, again holding that administrative finality barred reconsideration of appellants' claim. The Board nevertheless considered appellants' new evidence concerning John Jones' signatures, but found that evidence to be inconclusive. This order did not involve reconsideration of the FLS rights, in as much as petitioners had requested the Board to defer such reconsideration.

In 1983, appellants filed a suit for judicial review of our decision, and by decision dated December 8, 1987, the district court remanded the matter to this Board for consideration of three issues: (1) whether the Act of August 18, 1894, 28 Stat. 397, 43 U.S.C. § 276 (1982), validated the SAH scrip possessed by appellants; (2) whether evidence presented by appellants

---

4/ At the time of the decision in Ben Cohen, supra, we were left to speculate as to the nature of BLM's alleged refusal to accept appellants' selection. Appellants have never explained this alleged refusal more fully.

5/ Appellants filed a copy of a document taken from a soldier's pension file dated April 1915, which purportedly bore the signature of John Jones, and asserted that the document was proof that Jones did learn to write, and, furthermore, that the signature on that document was the same as the signature of the entryman in 1868.

showed that the Civil War soldier and the person who entered the homestead were the same person; and (3) whether appellants' FLS rights were valid. The court observed: "Plaintiffs may have additional evidence obtained from a lost file which can be evaluated should the motion for reconsideration regarding the scrip claim be granted." Cohen & Nordstrom v. Watt, Civ. No. LV-83-96-HDM (D. Nev. entered Dec. 11, 1987), slip op. at 6. 6/

Pursuant to the Board's order of March 24, 1988, the parties submitted reports recommending the procedures to be followed in order to comply with the court's order as provided by 43 CFR 4.29. BLM states that it no longer contests the validity of appellants' SAH claim and recommends that the proceeding be remanded to BLM for identification of suitable land from which appellants may select 80 acres to satisfy this claim.

BLM, however, maintains its view that the FLS right is invalid because the base lands were reconveyed to the Clarkes, "thereby fully satisfying any obligation which the Secretary may have had and extinguishing any lieu selection rights which may have accrued by the original conveyance." In support of its argument, BLM cites two decisions from the Court of Appeals which governs the district in which the plaintiffs initiated the action remanded here. Lade v. Udall, 432 F.2d 254 (9th Cir. 1970); Udall v. Battle Mountain Co., 385 F.2d 90 (9th Cir. 1967). Clark County has concurred in BLM's recommendation.

Appellants disagree with BLM's recommendation with respect to the adjudication of its FLS rights, asserting that BLM "has a closed mind on fraudulent reconveyancing via the willful, malicious intent of ESLO's [Eastern States Land Office] Louis S. Hillman to avoid patenting valuable lands." This allegation refers to the reconveyance of the FLS base land to the Clarkes which was obtained on their behalf by Ernest and Mildred Buhler in 1957. Appellants have requested a hearing and oral argument on this matter.

Before proceeding to consider the matters raised by the parties in relation to appellants' SAH claims, we will first consider appellants' FLS claims. By motion filed with this Board on June 17, 1988, appellants renewed their request for an oral argument and hearing with respect to the FLS right. We do not see how an opportunity for oral argument would enhance our disposition of this matter. Appellants have been given many opportunities to express their views concerning their FLS rights before this Board and before the court and have done so.

In considering appellants' request for a hearing, we observe that they did not state the precise nature or effect of the testimony and evidence they wish to introduce at such a hearing; they only assert that they wish to present the testimony of Donald L. Wheeler, a trustee of the Cameron Lumber Company, which allegedly had received a power of attorney from the Clarkes

6/ Clark County became party to this judicial proceeding as a co-defendant and cross-claimant, owing to its holding a conflicting lease for the lands for which appellants applied. This Board recognizes Clark County as an intervenor in this appeal.

to exercise their FLS right, and who purported to convey this right to appellants. Inasmuch as the primary ground for our rejection of appellants' FLS right was the failure of the holder of that right to present it timely before January 1, 1970, we may assume that the evidence to be offered from missing files as well as the testimony of Donald L. Wheeler, the former holder of that right, is directed toward the establishment of its timely filing. We also assume that some of this information would relate to the role of Hillman and the Buhlers in obtaining the reconveyance of the base land to the Clarkes.

[1] A hearing is necessary only when there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required. see United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 453 (9th Cir. 1971). In order to determine whether a material issue of fact exists, the Board first examines the legal principles which govern its consideration of an appeal on the basis of facts which are not in dispute. e.g., KernCo Drilling Co., 71 IBLA 53 (1983).

Appellants do not deny that the Clarkes conveyed the base land for appellants' FLS selection to the United States and that BLM subsequently conveyed those lands back to the Clarkes. Consideration of any evidence offered by appellants would not be necessary if BLM is correct in contending that the reconveyance of the base lands to the original holders extinguished whatever rights Donald L. Wheeler was empowered to exercise. The arguments raised by appellants have taken wide range and depart greatly from well-settled rules governing adjudication of FLS rights. It is therefore appropriate to relate those rules before considering appellants' contentions.

The history of FLS rights and their exercise is described by the court in Udall v. Battle Mountain Co., supra at 92-93. In the late 1800's, forest reserves were created from the public domain but intermingled land grants made it difficult to consolidate those reserves. For example, the Battle Mountain case involved an intermingled railroad grant; the FLS rights asserted in the instant appeal arise from conveyance to the United States of an 80-acre parcel of land that was part of a school section. By the Act of June 4, 1897, Congress provided that where lands in private ownership or subject to a bona fide claim lay within the limits of the forest reservation, the settler or owner might relinquish the tract to the Government and select in lieu thereof a tract of vacant public land of equivalent area.

On July 10, 1900, pursuant to this Act, the Clarkes conveyed the E 1/2 SE 1/4, sec. 16, T. 16 S., R. 32 E., Mount Diablo Meridian, California, to the United States, but their right to select other land was never exercised. The provisions of the 1897 Act relating to FLS rights were repealed by Congress in 1905, but a savings clause preserved contracts previously entered by the Department. Subsequent developments concerning the exercise of the FLS rights are related by the court as follows:

> Uncertainties arising where exchanges under the 1897 Act were incomplete or were defeated by the Act of 1905 created clouds on

the title of original owners of lands relinquished to the United States. To remedy this situation Congress, in 1922, passed an act permitting the United States to quitclaim relinquished base lands back to the original owner. The act provided:

> "That where any person or persons in good faith relinquished to the United States lands in a national forest as a basis for a lieu selection * * * and failed to get their lieu selections of record prior to [repeal of the Act of June 4, 1897] * * * or whose lieu selections, though duly filed, are finally rejected, the Secretary of the Interior * * * upon application of such person or persons, their heirs or assigns, is authorized to * * * relinquish and quitclaim to such person or persons, their heirs or assigns, all title to such lands which the respective relinquishments of such person or persons may have vested in the United States."

This act by its terms lapsed in five years but was, to the extent relevant here, reinstated by the Act of April 28, 1930, 46 Stat. 257.

Udall v. Battle Mountain Co., supra at 92-93; see also State of Oregon I, 78 IBLA 255, 278-84; 91 I.D. 14, 27-30 (1984), aff'd, Oregon v. Bureau of Land Management, 676 F. Supp. 1047 (D. Or. 1987).

[2] Pursuant to this legislation, applications for reconveyance of the base land to the Clarkes were made on their behalf by Ernest and Mildred Buhler. The Ninth Circuit has held that a reconveyance of the base land to the original owners extinguishes all FLS selection rights. Neuhoff v. Secretary of the Interior, 578 F.2d 810 (9th Cir. 1978); Udall v. Battle Mountain Co., supra.

Nevertheless, appellants assert that this reconveyance was improper, because the Department had recognized that the rights were held by the Cameron Lumber Company. Appellants claim to be the successors-in-interest to Cameron's rights. Appellants' argument is based on two erroneous assumptions: (1) that FLS rights were assignable, and (2) that the Department had recognized Cameron Lumber Company as the assignee of the Clarkes' rights.

So that no party to this proceeding will make any mistake as to the law applicable to the assignability of these rights, we quote in full the court's discussion of this issue:

> As we have noted, the Act of 1897 was but one of many acts by which Congress had authorized the granting of rights to selection and claim of public lands. In most of the acts the rights expressly were made either assignable or nonassignable. On this question the 1897 Act is silent.
>
> The position of the Department from the outset has been made clear, however. Since the right of selection under the Act ran to

"the settler or owner" of the relinquished base lands, the Government would deal only with him or a duly authorized agent or attorney. In the eyes of the Department the rights did not constitute assignable scrip.

"Instructions Relevant to Forest-Reserve Lieu Lands Selection," 31 L.D. 372, issued in 1902, contains this provision:

> "19. A selection based upon land covered by a patent or patent certificate must be made by the owner of the land relinquished or by a duly authorized agent or attorney-in-fact; and when made by an agent or attorney-in-fact, proof of authority must be furnished."

To this effect were decisions of the Department in F. A. Hyde, et al., 28 L.D. 284 (1899); John K. McCormack, 32 L.D. 578 (1904); Albert L. Bishop, et al., 33 L.D. 139 (1904); Hammond Lumber Co., 46 L.D. 479 (1918).

Further it was early made clear that a power of attorney was to be regarded as precisely that, and that patents would issue only to the principal. The agent was not to be treated as an assignee. Heirs of George Liebes, 33 L.D. 458 and 460 (1905); California Door Co., 52 L.D. 644 (1929).

A clear expression of the departmental construction and a review of the decisions on which it rested are found in George L. Ramsey, by Ted E. Collins, 58 I.D. 272, 294-95 (1942), where it was stated:

> "* * * From the beginning however dealers and speculators in public land rights have persisted in treating the exchange right as scrip, a floating, assignable right, and have made persistent efforts to persuade the Department to this view. But the Department early decided that no floating right was intended by the Congress; that this law does not provide for the issuance of scrip in any form or for the certification of a right of selection; and that to speak of a 'scrip right' or 'scrip land' under this legislation is inaccurate and tends to confuse and mislead.
>
> Under the act the Department had no power to <u>prevent</u> assignment and scrip treatment of the exchange right by its owner * * *. It could not require applicants to submit proof that they had not sold or assigned or contracted to sell or assign, directly or through irrevocable power of attorney, either their right to select or the selected lands themselves. But it could and did <u>refuse to recognize assignments and assignees</u>.

> The Department has therefore repeatedly held * * * that patent will not issue to an assignee but only to the owner of the base lands. Its position has been that if an owner who contemplates an exchange with the Government chooses to contract privately for the sale of his interest in selected lands in advance of their being patented to him, his transferee has no privity with the Government, will not be recognized by it and can make no demands upon it; and that no questions arising between the owner and his transferee upon such sale are any concern of the Government's."
>
> We regard this as a reasonable construction of the Act. [Emphasis in original.]

Udall v. Battle Mountain Co., supra at 93-94.

Appellants assert that the Clarkes granted a power of attorney with respect to their FLS right to the Cameron Lumber Company, although a copy of this power of attorney has not been submitted in the record. But assuming Cameron had been so empowered, such action could not validate any right asserted by appellants. Because the FLS selection right was never assignable as a matter of law, Cameron could have acquired nothing more than the right to select land in the Clarkes' name. see Lade v. Udall, supra; Udall v. Battle Mountain Co., supra. 7/

Nevertheless, in support of their assertion that the Department recognized the rights as belonging to Cameron, appellants submit a letter from the Commissioner, General Land Office, dated August 4, 1931, to Cameron Lumber Company stating: "The Cameron Lumber Company is hereby allowed to make further selections in lieu of the lands tendered as base in said selections" and described land including the parcel that had been reconveyed by Clarke to the United States. 8/ Appellants, in effect, contend that in this letter the Commissioner recognized the assignment of the Clarkes' interest to Cameron.

The language of the above letter does not bear the weight of appellants' interpretation. Instead, the language is completely consistent with recognition of Cameron's power as the Clarkes' attorney-in-fact to make additional selections in their name. Such a construction of the letter is

---

7/ In a private lawsuit involving FLS selection rights, a court ruled that a power of attorney to exercise those rights was revocable, notwithstanding express language in the power to the contrary. The power was not coupled with an interest because the FLS rights were not assignable, and because the power was not coupled with an interest, the power was revocable. Jay v. Dollarhide, 3 Cal. App. 3d 1001, 84 Cal. Rptr. 538 (1970). Certainly, Cameron's right would have terminated with the death of the Clarkes. id. It is also possible to construe the Clarkes' acceptance of the reconveyance as an implied revocation.

8/ We note that the Clarkes' base land is not separately listed, but is included in the description of a larger parcel, the SE 1/4.

favored because it comports with the law. To construe this letter as recognizing an assignment, we would have to hold that the Commissioner was acting beyond his authority. Departmental precedents precluded him from recognizing such an assignment in derogation of the Clarkes' rights as principals. see Udall v. Battle Mountain Co., supra. Given the fact that the letter can be more reasonably construed as merely recognizing Cameron's power of attorney, we see no basis for giving the broader effect appellants attribute to it.

We do not deny that invalid assignments of FLS rights may have been recognized; in Udall v. Battle Mountain Co., supra at 95, the court referred to such an instance:

> It is ironic but understandable that the single instance in which an exercise of administrative judgment under the Act has reached the courts should be one completely lacking in persuasion as to authoritative administrative construction. In Begue [v. Grizzly Livestock & Land Co., 1 F. Supp. 229 (S.D. Cal. 1932], the action of an inferior agent of the Department, being such as to avoid grievance, never reached the level of administrative appeal at which authoritative departmental determinations on behalf of the Secretary are made. We cannot permit the judgment of an inferior official to set at naught the otherwise clear departmental construction.

Thus, even if the Commissioner's letter to Cameron were susceptible to the interpretation that appellants place upon it, i.e., the FLS rights were recognized as being held by Cameron rather than by the Clarkes, this letter cannot be given any such effect in this appeal. see generally, Ideal Basic Industries v. Morton, 542 F.2d 1364, 1367-68 (9th Cir. 1976); Oregon v. Bureau of Land Management, supra at 1059-60.

Furthermore, even if the reconveyance of the land to the Clarkes arranged by the Buhlers had never been made, any deed issued in response to the exercise of the selection rights would be issued in the Clarkes' name, and appellants could acquire no interest in that land unless they had a power of attorney from the Clarkes authorizing appellants to convey it.

Appellants allege that it was improper for the Department to reconvey the land because Donald L. Wheeler, the trustee for Cameron Lumber Company from whom appellants acquired their rights, had recorded Cameron's rights and had protested the reconveyance to the Clarkes sought by the Buhlers. It is not clear that Wheeler's protest would have provided BLM with any basis for withholding the conveyance sought by the Buhlers. Wheeler did not even purport to act in the Clarkes' name, but was acting for the Cameron Lumber Company. Inasmuch as BLM was authorized only to issue a deed in the name of the Clarkes, the dispute between Wheeler and the Buhlers was not a matter over which BLM was required to take any cognizance. The Ninth Circuit has expressly precluded consideration of any argument to the contrary:

> Although we agree with the District Court that the Anti-Assignment Act, 31 U.S.C. § 203, does not bar Battle Mountain's claim, the

> rationale behind that Act, as set forth in United States v. Shannon, 342 U.S. 288, 291, 72 S.Ct. 281, 96 L.Ed. 321 (1952), is analogous to that which lies behind the Interior Department's longstanding interpretation of what the 1897 Act requires. The United States should not be required to investigate alleged assignments and determine the rights of several parties inter se, but rather should be able to deal with the original transferee of base lands or holder of a money claim, and let other claimants sue him on their assignments. So it is in this case. Nothing we say here reflects on the right of Battle Mountain to sue Santa Fe on the powers of attorney it executed in 1915.

Udall v. Battle Mountain Co., supra at 94 n.1. In Lade v. Udall, supra, the court declined to re-examine Battle Mountain, and held that prior recordation of an FLS power of attorney creates no obligation on the part of the United States to deal with the assignees regardless of when the Department could be charged with knowledge of their interest.

Appellants may have made numerous factual allegations concerning their FLS application, but the legal authorities which control the disposition of this matter render those assertions irrelevant. Appellants' request for a hearing must therefore be denied.

In conclusion, we find that appellants attempt to assert the FLS rights must be rejected for two separate and independently sufficient reasons: (1) they have provided no power of attorney issued by the Clarkes expressly authorizing appellants to act on behalf of the Clarkes; and (2) the reconveyance of the base land to the Clarkes extinguished all selection rights arising from that land. Neuhoff v. Secretary of the Interior, supra; Udall v. Battle Mountain Co., supra. This disposition makes it unnecessary to consider factual issues relating to the timeliness of appellants' attempt to exercise their selection rights, which had been the basis for BLM's rejection of those rights, as stated earlier in this opinion.

Before we end our consideration of this matter, we briefly comment on appellants' attacks on BLM's disposition of the reconveyance. At all times relevant to the disposition of this matter, the Clarkes' FLS rights were never legally assignable. Udall v. Battle Mountain Co., supra; Jay v. Dollarhide, supra. It necessarily follows that appellants could not acquire any interest which could be adversely affected by any action taken by this Department. id. Any loss suffered by appellants can arise solely from the effort to circumvent the legal prohibition on the assignability of the subject rights. Under Udall v. Battle Mountain Co., supra at 94 n.1, these losses are matters over which this Department is not required to take any cognizance, and are properly the subject of private litigation to which the United States is not a party. E.g., Santa Fe Pacific Railroad Co. v. Cord, 14 Ariz. App. 254, 482 P.2d 503, cert. denied, 404 U.S. 912 (1971). 9/

9/ Donald L. Wheeler, the person from whom appellants obtained the FLS rights they assert here, was a plaintiff in this litigation. Wheeler successfully sued the Santa Fe Pacific Railroad Company for money damages on

We now turn to consideration of appellants' assertion of the SAH right of John Jones. As we stated before, this Department has declared the SAH right of John Jones invalid in two prior decisions on the ground that the parties presenting that right had failed to provide evidence that the John Jones who had entered only 40 acres of land instead of 160 acres was John Jones the veteran. In view of the evidence before the Department at the time those decisions were made, there is no rational basis for attacking their correctness. Moreover, because the SAH right was properly declared invalid on that particular issue, it was totally unnecessary for the Department to consider several other issues affecting the validity of that right, and nothing in those decisions suggests that anyone ever purported to do so. Nevertheless, it has also been true that when an SAH right has been previously rejected for lack of evidence identifying the soldier with the entryman, the Department would consider the right again on the basis of new evidence. See, e.g., Elijah C. Putman, 23 L.D. 152 (1896), discussed infra. Thus, it was error for us to deny reconsideration of this matter on the basis of appellants' new evidence, and the court has remanded the matter to us for a determination of two issues: (1) whether the entryman and the soldier were the same, and (2) whether appellants' SAH rights were confirmed under 43 U.S.C. § 276 (1982).

BLM has conceded that the entryman and the soldier are the same on the basis of letters from appellants' handwriting analyst in the absence of countervailing evidence, and has proposed that 80 acres be made available to appellants from a pool of lands. Appellants oppose BLM's suggestion that other land be made available to them, contending that they are entitled to receive the land they selected. 10/

---

fn. 9 (continued)
the ground "that Santa Fe destroyed [his] forest lieu selection rights in 1955, 1956 and 1957 when it asked for and received quitclaim deeds from the United States to the base lands in exchange for those rights." 482 P.2d at 508. As in the instant appeal, the Buhlers played a role in obtaining the reconveyance of the land. Id. at 507. Thus, when Wheeler transferred his interest to appellants in 1974, he knew by virtue of his suit against Santa Fe that the only interest he had was, at most, the possibility of suing the owners of the base land. His position in that suit shows that he was fully aware that no selection right could be exercised before this Department if the base land had been reconveyed.

10/ We fail to comprehend the basis for appellants' argument that they are entitled to select the land for which they applied. They attempt to relate their application back to an SAH application filed in 1962 for some of the land by Dollarhide, but this Dollarhide application involved a different SAH right than the one he assigned to appellants. Even if it did involve the same right, that right could not be asserted with respect to any parcel of land until after that land had been classified as suitable for agricultural use. Bronken v. Morton, 473 F.2d 790, 796-97 (9th Cir. 1973); David B. Morgan, 60 I.D. 266 (1948). To warrant classification, such land must be economically reclaimable for agricultural use and cannot be valuable for higher uses than agriculture. Bronken v. Morton, supra. BLM persuasively contends that the land for which appellants applied does not have those characteristics.

BLM responded that no fact-finding hearing or oral argument was necessary because we must decide upon the legal consequences which flow from the Bureau's recognition of appellants' SAH rights. BLM contends that the records conclusively establish that appellants have acquired no prior right to select the lands they seek by exercise of the SAH rights. Appellants contend that we cannot consider BLM's proposal to allow them to select land from a pool because it is not within the scope of the court's remand order.

We find appellants' contention in this regard to be without merit. Although the court remanded the matter for us to make two specific findings related to the SAH claims, we can find no language in the court's order which prohibits the Department from considering the consequences of those holdings. When we ruled that appellants' SAH rights were invalid because appellants had failed to show that the soldier and the entryman were the same person, it was unnecessary to determine other questions relating to the validity of appellants' SAH rights, or to even consider the question of whether appellants had a right to the land they selected, or a right to select other lands available from a pool. Inasmuch as the reason why the court ordered us to consider 43 U.S.C. § 276 (1982) was to obtain this Department's views by a decision before ruling on the matter itself, we find it to be completely consistent with the court's order to consider such matters first. See generally, Udall v. Tallman, 380 U.S. 1 (1965).

Indeed, in the absence of explicit language in the court's order precluding us from effecting an appropriate disposition of this matter, we see no reason to limit our review. Cf. United States v. O'Callaghan, 29 IBLA 333, 345-46 (1977). To the extent that appellants maintain that the principle of res judicata does not bar consideration of new evidence concerning the validity of the SAH rights, they will not be heard to suggest that we are precluded from deciding questions that we have never decided before which relate to the validity of their SAH rights or their exercise.

One authority makes it clear that this Board's reconsideration of a matter is unrestricted so long as the Government holds legal title to the land which a claimant seeks:

> Recognition of the IBLA's power to reconsider under the circumstances of this case is consistent with the fact that it has long been recognized that the Secretary of [the] Interior has broad plenary powers over the disposition of public lands. Cameron v. United States, 252 U.S. 450, 459-64, 40 S.Ct. 410, 64 L.Ed. 659 (1920); Knight v. United States Land Association, 142 U.S. 161, 177, 12 S.Ct. 258, 35 L.Ed. 974 (1891); United States v. Williamson, 75 I.D. 338, 342 (1968). He has a continuing jurisdiction with respect to these lands until a patent issues, and he is not estopped by the principles of res judicata or finality of administrative action from correcting or reversing an erroneous decision by his subordinates or predecessors in interest. United States v. United States Borax Co., 58 I.D. 426, 430 (1943); see In re Burnaugh, 67 I.D. 366 (1960). So long as the legal title remains in the Government, the Secretary has the power and duty

> upon proper notice and hearing to determine whether the claim is valid. Best v. Humboldt Placer Mining Co., 371 U.S. 334, 336-40, 83 S.Ct. 379, 9 L.Ed.2d 350 (1963); Cameron v. United States, supra, 252 U.S. at 460-61, 40 S.Ct. 410.

Ideal Basic Industries, Inc. v. Morton, supra at 1367-68.

We also note that under the Ideal Basic Industries decision, BLM's stipulation that the entryman and soldier were the same does not dispose of appellants' application. Under the ruling of the court in that case, those issues remain open for our consideration. Based on its de novo review authority, the Board has previously held that it cannot accept a stipulation erroneously entered into by BLM and private parties. United States v. Williamson, 45 IBLA 264, 276 87 I.D. 34, 41 (1980).

Before we consider whether BLM properly concluded that the soldier and entryman were the same, we will first consider appellants' contention that the Jones SAH rights were validated by the Act of August 18, 1894, 43 U.S.C. § 276 (1982), which provides as follows:

> All soldiers' additional homestead certificates issued prior to August 18, 1894, under the rules and regulations of the General Land Office under section 274 of this title, or in pursuance of the decisions or instructions of the Secretary of the Interior, of date March 10, 1877, or any subsequent decisions or instructions of the Secretary of the Interior or the Commissioner of the General Land Office, shall be, and are declared to be valid, notwithstanding any attempted sale or transfer thereof; and where such certificates have been, prior to August 18, 1894, or may thereafter be sold or transferred, such sale or transfer shall not be regarded as invalidating the right, but the same shall be good and valid in the hands of bona fide purchasers for value; and all entries prior to August 18, 1894, or thereafter made with such certificates by such purchasers shall be approved, and patent shall issue in the name of the assignees.

[3] In Cord v. Morton, 449 F.2d 327, 329 (9th Cir. 1971), the court construed this Act as follows:

> The 1894 Act, as we read it, validates three categories of certificates issued prior to August 18, 1894: (1) those issued under rules and regulations of the General Land Office under 43 U.S.C. § 274; (2) those issued pursuant to decisions or instructions of the Secretary as of March 10, 1877; and (3) those issued pursuant to decisions or instructions of the Secretary or the Commissioner after March 10, 1877. It does not immunize homestead certificates issued after August 18, 1894, from such bases of invalidity as exist here. [Emphasis in original.]

The certificates to which the statute and the court's decision refer are "soldiers' additional homestead certificates," not those papers relating

to the original homestead entry. Prior to 1894, the Department would issue a special certificate upon application by the entryman to enter additional land. see, e.g., Elijah C. Putman, supra. Thus, the operative question determining the applicability of the 1894 statute to this appeal is whether such a certificate was issued to John Jones. No such instrument appears in the record submitted to this Board on appeal; therefore, we must conclude that no such certificate was confirmed by the 1894 statutory provision quoted above.

In the proceedings before the court, appellants contended that the original homestead entry papers dated 1868 constituted the certificates confirmed by the foregoing statutory provision. Appellants are mistaken in a logical and a chronological sense. The documents to which they refer relate to an original entry; they do not certify the right to make an additional entry. Moreover, since the statute authorizing additional entries was not enacted until more than 4 years after the issuance of appellants' papers, those papers cannot be the soldiers' additional certificates to which the 1894 Act refers. As the Putman decision makes clear, many SAH rights were never certificated.

The failure of Jones to obtain an SAH certificate, however, stands as no barrier to the assertion of Jones' right by appellants. The reasons why this is so are explained by Secretary Smith in the Putman decision, a decision we focus on in detail because it summarizes the Department's treatment of SAH rights from their inception until the date of that decision.

Putman had previously applied for a certificate which was denied because the War Department reported that there was no record of his military service. In 1894, two attorneys had applied for certification of Putman's right to make SAH entry, and on this occasion, the War Department was able to verify Putman's military service. The General Land Office denied the application for a certificate, but held that Putman was at liberty to appear in person and make an SAH application under Revised Regulations Relative to Soldiers' and Sailors' Additional Homestead Entries, 1 L.D. 654 (1883). Secretary Smith described at length the prior practice of the Department:

> The circular of February 13, 1883, supra, directed that:
>
> > The practice which has hitherto prevailed of certifying the additional right as information from the records of this office, and permitting the entry to be made by an agent or attorney, is hereby discontinued.
>
> The circular required the party desiring to make the additional entry to present himself at the local land office and make his application as in an original entry; to establish his identity as a soldier; to give the facts respecting his prior entry; and that he had not previously exercised his additional right, by entry, application, or by sale, transfer, or power of attorney.
>
> Since the passage of the act (June 8, 1872, 17 Stat. 333), giving to honorably discharged soldiers the additional homestead right, the Department has refused to recognize or sanction as a principle the assignability of this right.

> It was held in the case of John M. Walker (on review), 10 L.D. 354, that the right of entry provided in the statute "is strictly a personal right"; that it is not in itself a right of properly, "but merely a right to acquire property in a certain way and upon a given state of facts, which, without the right thus given, could not be so acquired"; the argument being that since the right unexercised can not be transferred to another by will, it could not be transferred to another by the solider in his lifetime.
>
> These regulations were made for the avowed purpose of protecting the government against fraudulent entries, it being made to appear that a large number of soldiers' additional entries had been made upon forged applications and by genuine applications by parties not entitled thereto; and that the right to make such entries had been the subject of sale and transfer, effected by means of two powers of attorney -- one to make the entry and the other to sell the land when entered.
>
> If, as hitherto held by the Department, section 2306 of the Revised Statutes gave to the soldier "merely a right to acquire property in a certain way," and that the right of entry therein prescribed "is not in itself a right of property," the instructions of February 13, 1883 (supra), are logical and clearly right.

Id. at 154. Secretary Smith then referred to the Supreme Court's decision in Webster v. Luther, 163 U.S. 331 (1896), in which the Court reviewed the statutory authorization for soldiers' additional homesteads and concluded that Congress intended those rights to be assignable. After analyzing the Court's opinion, Secretary Smith commented:

> It is thus seen that the assignment of the soldier's additional right conferred by section 2306 of the Revised Statutes is not only held to be legal, but the practice is commended, the real value of the right being measured "by the price that could be obtained by its sale."
>
> While this right is subject to sale and transfer, there is yet no law which provides that the data in your office and the War Department shall be employed in the certification of that right to those entitled to make additional entries. The certification of the right would doubtless in many cases simplify and facilitate the sale of the right, by furnishing in a tangible form the evidence upon which the additional entries could be perfected. These certificates would amount to so much scrip, which in the hands of purchasers thereof, could be employed in the entry of the public lands.
>
> More than thirty years have passed since the war of the rebellion terminated; thousands of ex-Union soldiers settled in the western states and entered public lands; many of them entered less than one hundred and sixty acres, and have had the benefit of

> the soldier's additional right; doubtless thousands more are still entitled thereto. In the administration of the law relating to this right numerous frauds have been discovered; entries have been allowed upon forged applications, and other glaring irregularities have been detected; the soldier, for whose benefit the act was passed, was usually the victim of the fraud. All this was made possible by the practice of certifying the right, which for a time obtained in your office. The lapse of time since the war would render the perpetration of the fraud still easier of accomplishment were the practice of issuing the certificates now resumed.
>
> The soldier may obtain this right for himself or sell it to another; it is not necessary to the exercise of either privilege that the right be certified; no statute requires it, and good administration forbids it.

Elijah C. Putman, supra at 157. The Secretary affirmed the denial of the certificate. Id. Secretary Ballinger later made clear that the recertification or reissuance of lost or destroyed certificates was to be discontinued. 38 L.D. 517 (1910).

Thus, the right asserted by appellants is not invalid because of the absence of a certificate. Accordingly, we now turn to consideration of whether appellants have submitted proof sufficient under the Department's precedents to entitle them to select 80 acres of land as proposed by BLM.

The discontinuance of issuing SAH certificates obviated the need for the Land Office to consider the qualifications of an applicant where no location of land was being made, but despite the absence of certificates, there nevertheless developed an active commerce in SAH rights:

> Residence and cultivation are not required in the location of soldiers' additional rights, either by the original beneficiary or by his assignee, no matter whether the original entry was perfected or abandoned. These rights are eagerly sought by scrip dealers who make inquiries calculated to disclose the existence of such rights, negotiate for the purchase of assignments thereof, and, if purchase is made, sell the rights so procured to parties desiring to locate them upon vacant public lands.
>
> All persons are cautioned against signing any assignment or affidavit in connection with the sale of these rights unless they are sure as to the truth of the statements contained therein. What those scrip dealers propose to purchase is not the land entered, but the right to make additional entry for the difference between the area of the land entered and 160 acres. Soldiers of the Civil War or their widows or heirs receiving inquiries from scrip dealers must not assume because the scrip dealer has found a record of an entry made by a person with a name merely similar to that of the soldier, or even of the same name, that the entry was in fact made by the soldier and that an additional right exists. Practically all of the letters addressed to such persons by scrip

> dealers are merely letters of inquiry, and it has been found that such letters of inquiry have been addressed to scores of persons having names similar to those of persons who made entries prior to June 22, 1874. For instance, scrip dealers have written to dozens of persons bearing names such as John Adams, John A. Adams, John B. Adams, John C. Adams, etc., asking whether the soldier addressed, or the husband of the widow addressed, was the same person who made an entry in the name of John Adams. It should be borne in mind that there are many persons having similar names, and that the entry may have been made by a person who was never a soldier.
> * * * * * * *
>
> This office does not pass upon the question of whether or not an additional right exists in the absence of an application to locate the alleged right upon a specific tract of land which must be accompanied with a record of the military service, description of the entry made prior to June 22, 1874, competent evidence showing identity of the soldier with the entryman, that no subsequent entry has been made, and that the right has not been previously assigned. If the right is sought to be located by the assignee, appropriate evidence must be submitted showing that he is entitled thereto by assignment.

Circular No. 1047, General Information Relative to Soldiers' Additional Homestead Rights, January 9, 1926, reprinted in U.S. Dept. of the Interior, Circulars and Regulations of the General Land Office (1930), 1377-80.

[4] In William E. Moses, 31 L.D. 320 (1902), Secretary Hitchcock was required to determine whether a soldier or an assignee of an uncertified right was required to apply in person when he sought to make entry under an uncertified SAH right. Secretary Hitchcock determined that Moses, a dealer in scrip and SAH rights who was the assignee of the widow of a soldier, was not himself required to appear in person "if the proofs submitted [with his application] established the material facts necessary to the existence of the right in the applicant, and the character of the land sought to be entered." In order to establish what proofs were required from an assignee of an uncertified right, the decision quoted page 321 of the circular of July 11, 1899 (page 321), as follows:

> An assignee of an uncertified right desiring to make an additional entry under this section must present his application as the assignee of the soldier for a specific tract of land to the register and receiver at the local office in whose jurisdiction the land lies, accompanying the same by a complete assignment duly executed, attested, and acknowledged as prescribed respecting the assignment of bounty land warrants. The identity of the original assignor with the soldier and original entryman must be established by the affidavits of two witnesses having personal knowledge of the facts, or, if such witnesses can not be procured, a satisfactory reason must be given and other facts presented tending to establish such identity.

> The applicant must furnish his affidavit of bona fide ownership at the date of the application, evidence of his citizenship, the usual non-mineral affidavit, and the affidavit of the soldier showing that he has in no manner exercised his homestead right since making the original entry, either by making an additional entry under said section or under any other act.
>
> The required affidavits must be sworn to and subscribed in the presence of the register or receiver or other officer authorized by law to administer oaths in homestead cases, and the officer administering the oath must certify to the identity and credibility of the party appearing before him. [Emphasis added.]

William E. Moses not only sold scrip but also made entry of land in behalf of others pursuant to SAH rights he held and proposed to convey. The case of Kruger v. United States, 246 U.S. 69 (1918), illustrates one case in which Moses entered the promised land, and makes it clear that Moses did not always know the character of the land he applied for when he was making an entry. In that case, the Supreme Court affirmed the cancellation of a SAH patent issued to William E. Moses on June 6, 1910, which Moses had secured by means of a false affidavit that the land was unoccupied by someone other than himself. In Pack v. Moses, 19 L.D. 360 (1894), rehearing denied, 20 L.D. 124 (1895), another entry made by Moses was cancelled as having been made for an admittedly fraudulent purpose. Of course, the Department has recognized the validity of other scrip with which Moses dealt. E.g., William E. Moses, supra; Ricard L. Powel, 28 L.D. 216 (1899). We cite the above cases to show that evidentiary requirements for the assertion of such rights must still be maintained.

The SAH right asserted by appellants arises from the purported assignment of Jones' additional right to enter another 120 acres to W. E. Moses in 1901. As the 1899 circular cited in the Moses decision makes clear, it is not sufficient that the soldier and original entryman be identified as the same individual, but the identity of the original assignor, in this case Jones, must also "be established by the affidavits of two witnesses having personal knowledge of the facts, or, if such witnesses cannot be procured, a satisfactory reason must be given and other facts presented tending to establish such identity." This requirement applies with equal force to the assignment obtained by Moses from Jones as it did to the assignment obtained by Moses that was under consideration in the appeal before Secretary Hitchcock.

Secretary Hitchcock's decision refers to a pair of companion cases, Ricard L. Powel, 28 L.D. 216 (1899), and Ricard L. Powel No. 2, 28 L.D. 220, rehearing denied, 28 L.D. 437 (1899). An individual named Cranmer had made a homestead entry in 1868 and assigned his SAH right to William E. Moses in

1898. Two days later, Moses assigned the right to Ricard L. Powel. With respect to the Cranmer right, Acting Secretary Ryan determined that the affidavits of the witnesses were sufficient to establish that the entryman was the same person who made the assignment to Moses and that the entryman was the same person who had rendered military service. Ryan did not reach the same conclusion with respect to the SAH right that had been assigned to Powel from Job Van Valkenburg. Ryan distinguished the two cases as follows:

> It is said by Powel, in a brief in the case now under consideration, that the two cases are essentially similar. This is not so. They are essentially dissimilar in many respects. In the present case the proof of the identity of the Job Van Valkenburg who performed the alleged military service is not nearly as strong as is the proof of identity in the other case. In the Cranmer case the corroborating witnesses had known him for twenty years; in this case the corroborating witnesses have only known Van Valkenburg for five years. In the Cranmer case the identity of the man who made the assignment as the man who made the original homestead entry was clearly established; in this case there is room for doubt whether the Van Valkenburg who makes the assignment is the same Van Valkenburg who made the original homestead entry. The name signed to the original homestead application herein is spelled "Vanvalkenburgh," whereas the name signed to the assignment of the soldier's additional right is spelled "Van Valkenburg."

The second Powel decision makes it abundantly clear that it is not sufficient merely to establish that John Jones the entryman and John Jones the soldier were one in the same; once that determination has been made, it is also necessary to establish that that individual is the same John Jones who assigned his SAH rights to Moses. As in the Powel cases, this identification must also be established by the affidavits of two witnesses, or other equally substantial evidence.

The comparison of signatures has always been of great importance in determining the validity of SAH rights. In Eugene Symons Eldridge, supra, the Department affirmed the rejection of an SAH right because of a discrepancy in signatures, disregarding the affidavits of witnesses in support of the identity of the entryman and soldier. Where a comparison of signatures corresponded with the statements of witnesses that the soldier and entryman were the same, the rejection of an SAH right has been reversed. George A. Evans, A-30987 (Oct. 16, 1968).

The signatures that purportedly establish that Jones the soldier and Jones the entryman are the same are set forth in the appendix. We find them to be so disparate that we cannot understand how BLM would now accept them as evidence that the SAH right is valid. The letter from appellants' handwriting expert is conclusory, and sheds no light on how he reconciled the dissimilarities in reaching the conclusion that the documents were signed by the same individual. Given the obvious dissimilarity of the signatures, an agency hearing should have been convened and, the handwriting expert should have been called upon to testify.

One other matter, however, obviates the need to take such testimony. Even if Jones the entryman and Jones the soldier were the same individual, there is no acceptable evidence that he assigned his right to Moses. In view of the fact that the Jones' SAH rights had been rejected previously because the selected land was unavailable or because there was no established identity between the soldier and the entryman, it does not appear that the Department ever considered the validity of the assignments; its prior dispositions of those cases made consideration of that issue unnecessary. Nevertheless, a valid assignment has always been a prerequisite to the successful assertion of an SAH right, and the evidentiary requirements that must be met to establish that right have always been clear.

In Margaret W. Chivers, 21 IBLA 124 (1976), we affirmed the rejection of a cash election application in satisfaction of an SAH right on the ground that the applicant had failed to show a complete chain of title from the soldier to the applicant. In the instant case, we have no acceptable evidence that Jones assigned his right to Moses. The purported assignment and supporting affidavits have typewritten names in the spaces in which signatures must appear.

As appellants made clear in their Petition for Reconsideration filed with this Board on August 16, 1976, this Department bears no responsibility for the loss of those documents. Consistent with its practice at the time, the Department returned the original documents to Floyd R. Sprague, a prior applicant for the Jones SAH right, and since then, the documents have never been located.

We can find no reason why the evidentiary requirements to support an SAH application should diminish with the passage of time. To rule otherwise would have enabled holders of invalid rights to simply wait until their rights could be approved. Those who hold such rights bear the responsibility of maintaining the evidence necessary to validate their rights. Those who seek to acquire such rights bear the responsibility of assuring that adequate documentation exists to support them.

Thus, the evidence required from appellants to establish a valid assignment from Jones to Moses can be no different from that which Moses himself would have been required to submit if he had filed an application in 1901. See William E. Moses, supra; Ricard F. Powel, No. 2, supra. We can conceive of no reason why the copies of unsigned typewritten documents would have been accepted then or should be accepted now.

Accordingly, we reject the recommendations of all parties to this appeal with respect to possible further proceedings in this matter and proceed to a final disposition in this decision. We grant reconsideration of the rejection of appellants' FLS selection application and find that that application is properly rejected for the reasons stated earlier in this decision. We find that the Jones SAH right was not validated under 43 U.S.C. § 276 (1982) because there is no evidence that an SAH certificate was ever issued. We find that the evidence presented is not by itself sufficient to establish the identity of the soldier or entryman without an opportunity for a hearing at which the testimony of appellants' handwriting expert could be taken. We

find that such a hearing is not necessary, however, because appellants' SAH application fails for lack of acceptable documentary evidence that Jones assigned his right to Moses.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's decisions rejecting appellants' FLS and SAH applications are affirmed as modified by this decision.

Wm. Philip Horton
Chief Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

<u>Editor's note:</u> The viewer may have to go to graphics mode to see the signatures.

APPENDIX

Signatures of John Jones the entryman from (1) homestead application and (2) homested affidavit executed in February 1868.

(1) 

(2) 

Signature of John Jones the soldier on petition form dated April 12, 1915.